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| 09/166,625 | 10/05/98 | MAY | D 1020-0501 |

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EXAMINER

JUSKA, C

ART UNIT

PAPER NUMBER

1771

22

DATE MAILED:

03/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/166,625

Applicant(s)
May

Examiner
Cheryl Juska

Group Art Unit
1771



☒ Responsive to communication(s) filed on Jan 8, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-17 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,266,390 (Garland) alone, or in view of US 5,368,912 (Reaves), for the reasons of record.

Response to Arguments

3. Applicant's arguments filed in the *Response to Office Action* on January 8, 2001, have been fully considered but they are not persuasive.

Applicant traverses the obviousness of the Garland rejection by asserting that Garland actually teaches away from the claimed invention. Specifically, Applicant asserts, "Garland teaches that canvas (i.e. cotton) is not suitable because (i) it may permit the fluid product to penetrate and pass through the cloth, and (ii) the material is inconsistent due to a wide range of weights and weaves." (Response, page 4, 3rd paragraph.) Said argument is found unconvincing because of Applicant's faulty conclusion of the equivalence of canvas and cotton.

Although, Applicant's submitted definitions of canvas do indicate that canvas is commonly made of cotton, they do not in any manner imply said equivalence. A definition of canvas more specific to the textile arts is given as "A general classification of strong, firm, closely woven

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fabrics *usually* made with cotton.” Additionally, said definition states that “the terms canvas and duck are used interchangeably.” The definition of duck includes “a broad term for a wide range of strong, firm, plain weave fabrics, including the heaviest, strongest, single woven fabric made; duck is *usually* made of cotton, although sometimes linen or blends of cotton and manufactured fibers are used.” (*Fairchild’s Dictionary of Textiles*, 7th ed.) Applicant’s own definitions of canvas also indicate fiber types other than cotton. Thus, “canvas” is more characteristic of a fabric weave than of a specific fiber type. Therefore, Applicant’s assertion that Garland’s teaching of canvas is equivalent to a teaching of cotton is unpersuasive. Garland’s teaching of the disadvantage of canvas (i.e., fluid penetration) may be due to the particular weave rather than the fiber type. In fact, Garland notes said canvas is inconsistent *due to* different *fabric weights and weaves*. Also, it is asserted that the problem of fluid penetration of the canvas dropcloth is primarily solved by Garland with a central layer of a barrier film. (Note Garland, col. 3, lines 19-23.) Hence, the main disadvantage of canvas, according to Garland, is resolved by not the choice of material (cotton vs. polypropylene) of the outer absorbent layers, but rather by the central barrier layer.

Additionally, Applicant argues that Garland teaches “canvas (i.e. cotton) does not hold liquid, rather it permits fluid to penetrate or pass through the cloth,” which is contrary to what Garland’s preferred polypropylene material is capable of doing. Said argument is also found unpersuasive. First, it is asserted that woven and nonwoven fabrics, regardless of fiber type, will inherently possess different absorption and retention properties due to the inherently different

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fabric structures. Thus, Applicant's direct comparison of said properties between a woven canvas fabric and a spunbond nonwoven fabric is flawed.

Furthermore, it is reiterated that Garland's primary requirement for the outer layers is that they are absorbent and retain fluids. Garland specifically teaches the polypropylene nonwoven must be "specially formed or treated to absorb moisture-based products and the like" (col. 3, lines 29-31). As previously argued, cotton or rayon fibers are known to be inherently absorbent; they do not require special treatments to produce absorbency. Thus, it would have been obvious to one of ordinary skill in the art to substitute a known absorbent fiber for a hydrophobic fiber which requires a special treatment to become hydrophilic. Also, it is asserted that with a barrier layer attached to the outer absorbent layer, the retention of fluid is inherently improved (i.e., fluid does not penetrate through the dropcloth), regardless of the fiber type employed in said absorbent layer.

With respect to Applicant's assertion that the cited Reaves patent does not provide the documentary proof of obviousness which is lacking in Garland (Response, page 5, 1st paragraph), it is reiterated that Reaves clearly teaches the use of films, woven fabrics, or nonwoven fabrics for the inventive protective cover (col. 2, lines 52-65). Reaves also clearly teaches that natural or synthetic fibers may be employed, with cotton and polypropylene being the two cited examples. Thus, the Examiner is not asserting that woven and nonwoven fabrics are always suitable substitutes, as argued by the Applicant (Response, page 5, 1st paragraph).

Therefore, Applicant's arguments are found unpersuasive and the above rejections stand.

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Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.

cj

March 10, 2001


CHERYL JUSKA
PATENT EXAMINER